IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Criminal Appeal No.841-DB of 1997
Date of decision: 15.02. 2007

Vijay Kumar

-----Appellant.

Vs.

State of Punjab

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mr. Sudhir Mittal, Advocate and
Mr. Sukhdeep Parmar, Advocate
as Amicus Curiae for the appellant.
Mr. M.S. Sidhu, Sr. DAG, Punjab for respondent.

Adarsh Kumar Goel, J.

This appeal has been filed by the appellant-accused against his conviction under Section 302 IPC for causing death of his sister Kamlesh Rani, for which, he has been sentenced to undergo imprisonment for life and to pay fine of Rs.2,000/- or in default, to under further RI for three months. He has been further convicted under Section 324 IPC for causing hurt to his niece Sonu and sentenced to undergo RI for six months. He has also been convicited under Section 324 IPC for causing injury to his brother Rakesh Kumar, for which, he has been sentenced to undergo RI for three months. All sentences are to run concurrently.

FIR was registered on the statement of Rakesh Kumar (PW-2), brother of the accused, to the effect that on 30.04.1996 at 3 P.M., Sonu (PW-3) daughter of Pritam Dass (who was daughter of sister of the deceased and was living with the deceased) was preparing meal while the deceased Kamlesh Rani and her brother Rakesh Kumar were sitting on a cot. Accused Vijay Kumar who was unhappy, on account of the family members' objecting to his being addicted to intoxication and who was working as carpenter in a shop, came with a dagger in his hand and started giving dagger blows to Sonu. He gave three dagger blows, two on the left arm and the one on the left side of her breast. Rakesh tried to rescue her, on which, Vijay Kumar gave a dagger blow on his right flank. Kamlesh Rani came to rescue then, on which, the accused gave dagger blows to her. Injured raised alarm "Mar Ditta, Mar Ditta" (killed, killed), on which, Mohinder Pal, brother of Rakesh Kumar came and tried to catch hold of the accused, but the accused ran away with his weapon. Mohinder Pal carried the injured to Civil Hospital, Jalandhar, where Kamlesh Rani succumbed to her injuries. Statement of Rakesh Kumar was recorded by Suresh Chander, SI (PW-4) who reached the hospital on receiving information and took the opinion of the doctor. He sent the statement for registration of FIR at 5.35 P.M. and FIR was registered at the police stationat 5.55/6.30 P.M. SI Wazir Singh (PW-5) who was posted as SHO, also reached the hospital on receiving information and conducted the investigation. He recorded the statement of injured Sonu and took into possession bloodstained clothes of Sonu and Rakesh. He prepared inquest report regarding

deadbody of Kamlesh Rani (Exh.PH) and handed over the deadbody for post-mortem examination. He also went to the spot, prepared site plan, collected blood from the spot and took sealed parcels into possession. He deposited the case property with the MHC. On the next day, he took into possession clothes of the deceased. He arrested the accused on 05.05.1996 and interrogated him on 06.05.1996 and recorded his disclosure-statement, which led to recovery of dagger (Exh.P-1). On 07.05.1996, he recorded the disclosure-statement of the accused which led to recovery of blood-stained clothes. As per report of the Chemical Examiner, blood lifted from the place of occurrence, clothes of deceased, clothes of Rakesh Kumar, clothes of Sonu, dagger and shirt of the accused were found to be stained with human blood. No demonstrable blood was found on the pant of the accused.

After completing the investigating, the accused was challned. The prosecution examined Dr. Romesh Kumar (PW-1), Rakesh Kumar (PW-2), Sonu (PW-3), SI Suresh Chander (PW-4) and SI Wazir Singh (PW-5).

The accused denied the prosecution allegations.

After considering the evidence on record, the trial Court held that the case of the prosecution was proved beyond reasonable doubt and convicted and sentenced the accused.

We have heard learned amicus curiae and perused the record.

Learned amicus curiae for the appellant submitted that PW-3 Sonu had become unconscious and therefore, her evidence

was not relevant. He also submitted that in absence of any motive, case of the prosecution could not be accepted.

Learned counsel for the State supported the conviction of the accused.

We are of the opinion that the case of the prosecution stands fully proved on record. There is direct evidence of PW-2 Rakesh Kumar, who is brother of the accused as well as the deceased. The occurrence took place in broad day-light. Being the brother of accused, Rakesh Kumar has no reasons to falsley implicate the accused. He clearly deposed that the accused first attacked Sonu and then assaulted Rakesh Kumar and on intervention of Kamlesh, he caused injuries to her. This version could not be shaken in the cross-examination. Version given by Rakesh Kumar is corroborated by Sonu (PW-3) who is daughter of eldest sister of the accused. She was living with the deceased Kamlesh Rani. She also had no reason to falsely implicate the accused. There could be no possible mistake of identity.

DW-1 Dr. Romesh Kumar, Emergency Medical Officer, Civil Hospital, Jalandhar medicolegally examined Kamlesh Rani, deceased at 3.45 P.M. on 30.04.1996 and found followign injuries:-

> "1. An incised wound 3 cm x 1.5 cm was present on the lateral wall of chest 5 cm below the left axilla perfused bleeding was present. Probing was not done. Advised for surgeon opinion and kept under observation.
>
> 2. An incised wound 4 cm x 1.7 cm into bone deep was present on the left upper part of left upper arm.

Perfused bleeding was present. Advised for x-ray and or the surgeon opinion.

3. An bruise 2 cm x 4 cm was on anterior aspect of upper part of left thigh. Swelling was present.
4. An incised wound 5 cm x 4 cm x bone deep was present on the back of left thigh. Perfused bleeding was present. Probing was not done. Advised for x-ray and Ortho surgeon opinion.
5. A lacerated wound 2.5 cm x . 5 cm x skin deep was present on the left side of fore head 4 cm from mid line. Blood clot was present.
6. An incised wound 2 cm x 1 cm x bone deep was present on the posterior aspect of right index finger on its middle phalynx. Blood clot was present.
7. An incised wound 2 cm x 1 cm x bone deep was present on the posterior aspect of proximal Phalynx of left middle finger. Blood clot was present.
8. A lacerated wound 2 cm x 1 cm x bone deep was present on the proximal and middle inter phangenal joint on left index finger. Blood clot was present.
9. An incised wound .75 cm x .5 cm x skin deep was present on the posterior aspect of left index finger. Blood clot was present.
10. An incised wound 1 cm x .5 cm x skin deep was present on the posterior aspect of right index finger on its proximal phalynx. Blood clot was present.
11. A lacerated wound 1 cm x 1.5 cm x skin deep was present on the posterior aspect of right middle finger on its middle phalynx. Blood clot was present.
12. An incised 1.5 cm x.5 cm x skin deep was present on the posterior aspect of right ring finger. Blood clot was present.

13. A lacerated wound 1 cm x .5 cm x skin deep was present on the bridge of nose on its left side. Blood clot was present.
14. Lacerated wound .5 cm x .5 cm x skin deep was present on the bridge of nose 2 cm below the injury No.13. Blood clot was present."

According to him, the injuries had been caused within about 1 hour.

He also examined Sonu and found following injuries:-

"1. An incised wound 3 x 1 cm was present on the left breast. Perfused bleeding wass present. Probing was not done. Advised for surgeon opinion and x-ray and kept under observation.
2. An incised wound 'L' shaped on left arm on its anterior medial aspect of left arm 9 cm from left elbow joint. Depth was subcutaneous.
3. An incised wound 10 cm x 4 cm x bone deep was present on the left fore arm 5 cm from left elbow joint. Perfused bleeding was present. Advised for x-ray and Ortho surgeon opinion."

He also found following injuries on Rakesh Kumar:-

"1. An incised wound 3 cm x 1 cm was present on the lower part of back on its right side 7 cm from midline. Perfused bleeding was present. Probing was not done."

He also conducted post-mortem examination on the deadbody of Kamlesh Rani on 01.05.1996 at 12.50 P.M. and in his

opinion, the cause of death was injuries which were ante-mortem and sufficient to cause death in ordinary course of nature.

FIR (Exh.PJ) was promptly recorded. Kamlesh Rani as well as other injured persons were taken to the hospital. The occurrence is of 3 P.M. and after medical treatment and arrival of police at the hospital, statement of Rakesh Kumar was recorded at 5.35 P.M. and FIR was registered on 5.55 P.M. at the police station. Statements of witnesses were also promptly recorded. Weapon of offence was recovered from the accused. Disclosure-statement (Exh.PX) of the accused was duly proved, which led to recovery of the dagger. Recovery of bloodstained earth and bloodstained clothes of the injured, the deceased and the accused further corroborated the prosecution version. As per the report of the Chemical Examiner, human blood was found on the recovery effected from the place of occurrence as well as on the clothes of the injured and the deceased and the shirt of the accused as well as on the weapon of offence.

In view of direct evidence on record, there was no requirement to prove motive. From the prosecution evidence, it is clear that the accused was addicted to intoxication, which was being objected to by the family members and as a reaction to which, the accused assaulted the family members and caused death of his own sister Kamlesh Rani. Case of the prosecution is thus, clearly proved from the direct evidence. Prompt lodging of FIR, recovery of weapons in pursuance of disclosure-statement of the accused can also be taken into account. No doubt whatsoever arises about the case of the prosecution.

In view of above, we have no option but to affirm the conviction and sentence of the accused.

We do not find any merit in this appeal and the same is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

February 15, 2007 **(H.S. BHALLA)**
ashwani **JUDGE**